Supreme Court of the United States

OCTOBER TERM, 1952

No. 260

HAROLD G. ARON,
Petitioner,

v.

JOHN W. SNYDER, Secretary of the Treasury, United KATHARINE M. DRIER, STERN BROTHERS, a corporation, KATHARINE M. DRIER, STERN BROTHERS, a corporation BONWIT TELLER, INC., MORRIS PLAN INDUSTRIAL BANK OF NEW YORK, MABEL GRANT, LILLIAN S. ARON, RICHARD L. MERRICK and BETSY E. RITCHIE,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT TO REVIEW A JUDGMENT AFFIRMING A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, ORDERING THE DISTRIBUTION OF A FUND OF $34,864.47, DEPOSITED TO THE CREDIT OF THIS PETITIONER IN THE REGISTRY OF THAT COURT BY THE SECRETARY OF THE TREASURY OF THE UNITED STATES, AND BRIEF IN SUPPORT THEREOF

HAROLD G. ARON, *Pro Se,*
Petitioner,
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APPEAL PRINTING CO., INC., 130 CEDAR STREET, NEW YORK, WO 4-3033

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Supreme Court of the United States

OCTOBER TERM, 1952

No.

HAROLD G. ARON,
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JOHN W. SNYDER, Secretary of the Treasury, United States of America, GREAT LAKES STEEL CORPORATION, KATHARINE M. DRIER, STERN BROTHERS, a corporation BONWIT TELLER, INC., MORRIS PLAN INDUSTRIAL BANK OF NEW YORK, MABEL GRANT, LILLIAN S. ARON, RICHARD L. MERRICK and BETSY E. RITCHIE,

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Harold G. Aron, plaintiff in the United States District Court for the District of Columbia and appellant in the United States Court of Appeals for the

District of Columbia Circuit, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in this cause on April 10, 1952 and the order of said Court, denying appellant's motion for rehearing on May 9, 1952.

Opinion and Judgment Below

There was no opinion entered in the United States District Court for the District of Columbia. The opinion of the United States Court of Appeals for the District of Columbia Circuit appears in the record and is reported in 196 Fed. 2d 38.

Jurisdictional Statement

The judgment of the United States Court of Appeals for the District of Columbia Circuit was rendered on April 10, 1952. A petition for re-hearing was denied on June 9, 1952. This Court has jurisdiction by virtue of the provisions of Title 28, United States Code, Section 1254.

Questions Presented

The questions involved are whether the Court of Appeals can, in order to give plausibility to an erroneous decision in the District Court, make new and independent findings of fact, totally unsupported by any evidence and directly in conflict with the undisputed evidence before the District Court, and, on the basis of such new findings of fact, affirm a judgment below and totally ignore each and every of ten grounds for reversal, presented by the appellant, without any brief or appearance by any appellee in opposition, and by that affirmance sanction the abro-

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gation by the District Court of the Constitution and Statutes of the United States and of the Federal Rules of Practice.

Reasons for Granting Writ

(1) It is of public importance in all Federal judicature and to all litigants subject thereto to have this Court determine whether the United States District Court or its Clerk has power under Ch. 651, June 19, 1934 (48 Stat. 1064) to disregard, suspend and in effect abrogate the Federal Rules of Civil Practice and be a law unto itself, not only outside of the Rules of Practice, but as well the Constitution of the United States and every principle which constitutes due process of law.

(2) It is of deep concern in every United States Court of Appeals and the entire administration of federal laws and statutes for this Court to determine whether a Court of Appeals has power to support and thereby and solely thereon make new findings of facts, without a scintilla of evidence to support them, and directly in conflict with the truth.

(3) It is of constitutional importance for this Court to determine whether any court can impose a money judgment without the semblance of process or consent and thereby distribute funds deposited in the court's own registry belonging to a party, and order its payment to persons previously found by judicial decision to have no claim thereto.

(4) It is of every day importance in commerce and industry for this Court to determine whether a money judgment may be entered against a party, without process, notice, knowledge or consent by the party or by an attor-

ney acting for him, but without authority or claim of authority to consent, solely because such attorney was present in the court room on a previous day during the argument of motion affecting the disposition of funds then on deposit in the registry of the court, at which time he specifically disclaimed any authority to settle without consulting his client who was not present or available.

(5) It is of procedural importance for this Court to determine whether any Court of Appeals may, without pretense of excuse or grounds therefor, disregard without comment or reference, its own earlier and controlling decision in the same cause, a fortiori, where this Court has denied certiorari as to such decision; and in complete disregard of its own earlier and controlling decision affirm a judgment in direct and irreconciliable conflict therewith.

(6) It is of constitutional importance for this Court to determine whether, under constitution guaranties of due process, a District Court may strike from the record on appeal to the Court of Appeals such part of the record in the District Court which appellant designates as directly relevant and material to the validity of the judgment below and essential to the protection of his rights and property.

(7) It is of grave importance to this petitioner and any others similarly situated, for this Court to determine whether money belonging to the petitioner and deposited in the registry of the court can be ordered paid and be actually paid unconditionally, over his protest, leaving judgments of record against him for the same indebtedness unsatisfied as entered in other jurisdictions by the persons thus receiving payment.

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(8) It is of juridical importance for this Court to determine whether title and possession of upwards of $35,000 deposited in the registry of court can be transferred from petitioner's ownership to third parties without any sworn claim, affidavit, testimony, evidence or proof of claim under oath or the semblance of trial, confrontation, examination or cross examination of witnesses.

(9) It is of importance to this Court to review the proceedings below and to determine whether they "represent a gross miscarriage of justice or a subtle erosion of legal principles * * * or that proper supervision of the federal judiciary demands that the lower court be "set right". (Quotation from Stern on Supreme Court Practice, published by the Bureau of National Affairs—1950, page 114.)

Statement of the Case

On the 17th of April 1950, this appellant moved in the United States District Court for the District of Columbia for an order disbursing the sum of $34,867.04, deposited to his credit in the Registry of the District Court, under order of that Court, by payment out of stipulated amounts to various persons denominated by him, including all persons, other than himself who had any interest therein or claim thereto under a prior decision of the District Court, affirmed by the Court of Appeals for the District of Columbia on December 8, 1947, in a decision entitled *Betsy Ritchie (Aron), Appellant* v. *Katharine M. Drier, et al., Appellees,* 165 Fed. 2d, 238).

The motion was heard before District Judge Tamm on June 28, 1950, who at the close of the hearing adjourned court until the following morning at ten, directing counsel to be present, at which time he would hand down his

decision. Overnight in the secrecy of his chambers, an order was drawn by some one (undisclosed) signed, under date of June 28, and when counsel for appellant appeared in Court the following morning at the appointed time, the order had already been entered and the Clerk of the Court had disbursed the fund or was in the process of doing so. The order does not on its face purport to be a consent order and no semblance of compliance with Rule 17 of the District Court is even pretended. Instantly on being informed thereof appellant asked that payment be stopped on the checks and tendered any security the Court might require pending appeal, as Rule 62a of the Federal Rules of Civil Procedure providing for an automatic stay, had been completely ignored, disregarded and violated.

Appeal was taken forthwith to the Court of Appeals for the District of Columbia; the record of appeal was filed in the Court of Appeals on October 18, 1950. Nevertheless, there was filed in that court on January 3, 1951, as a supplemental record, a transcript of the stenographic report of the proceedings in the District Court. This was done without notice to or knowledge by the Appellant, except that he received by mail a supplemental Designation of Record under Rule 75h, filed by the United States attorney in the District Court on December 29, 1950, without any claim or evidence of error, accident or mistake, as required by Rule 75h. Thereafter, the United States Attorney filed a motion to dismiss the appeal on the basis of the Supplemental Record and was joined in this motion by the attorneys for the Great Lake Steel Company, originally appearing, before the first named was appointed to the bench of the District Court, as Walter M. Bastian and A. K. Shipe, named as such in the order appealed from. The motion to dismiss the appeal was denied; the United States Attorney then withdrew from the case and has since not

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appeared; the attorneys for the Great Lakes Steel Corporation filed no brief and did not appear on the argument of the appeal.

The appeal was submitted without argument by the appellant but the Court heard the appellant, Betsy Ritchie in person, although no brief had been filed by her or any other appellee. This was on November 31, 1951; the decision is dated April 10, 1952, but, as officially printed, departs from the uniform practice of the court, by not reciting the date on which it was argued. On motion for re-hearing, on June 9, 1952 the motion was denied.

The decision (which as printed recites that Betsy Everson Ritchie, appellee, *pro se*, *submitted on the brief* a quite inscrutable statement since there was no brief before the court except that of the appellant) turns squarely on the totally erroneous statements in the opinion that appellant's "attorney was present when the judgment was signed," and that no protest or objection was made by or on behalf of the appellant.

In the entire proceeding here sought to be reviewed approximately $35,000 of the appellant's money has been disbursed from the Registry of the District Court, without trial or a word of testimony, sworn or otherwise, except the disregarded affidavits of this appellant; and without examination or cross-examination.

Under the rigid and in this case harsh rule of the Court of Appeals, requiring the statement of one printed page of the issues involved (in active litigation, under four titles, in the District Court over a period of ten years), the following statement was made:

Statement of the Issues Involved

The principal issue involved is whether the District Court had any power or right, in complete conflict with a

prior decision of this Court of Appeals, summarily to distribute a fund of approximately $35,000, belonging to this appellant and deposited in the Registry of Court by the Secretary of the Treasury under an Act of Congress and with the approval of the District Court.

To permit their consideration by this Court, if it sees fit, the following issues are also stated, under the order of this Court at its April Term 1950:

> Whether the District Court could summarily disburse said funds, in view of the automatic stay provided by Rule 62a of the Federal Rules of Civil Procedure, until ten days after the judgment of the Court ordering their distribution;
>
> Whether there was any power or right in the District Court to enter judgments against this appellant without notice, process or opportunity to answer or defend and simultaneously to satisfy said judgment out of his funds in the Registry of the court, all without notice or opportunity to be heard;
>
> Whether there was any power in the District Court to deny appellant's motion to be relieved of its judgment, distributing said funds, after the appellant had taken this appeal as a matter of compulsion arising from the failure of the District Court to act on said motion;
>
> Whether the District Court had any power to strike from the Record on Appeal to this Court any part of the appellant's Designation of Record.

By its decision, the Court of Appeals completely evaded these issues and their corollaries, hereinafter stated, by making the above referred to *new finding, totally without*

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support and factually erroneous, that appellant's *"attorney was present at the time the judgment was signed"* and the further new finding, previously alluded to also, again, *totally without support and factually erroneous,* that "neither the judgment nor the record, as covered by the Appendix to appellant's brief, reveals any objection to the judgment at the time it was entered." As to how far these new findings of the Court of Appeals depart from the facts is instantly apparent by reference to pages 17a and 18a of the Appendix to appellant's brief in the Court of Appeals (R. p.). Obviously, an attorney not present when the judgment was signed could neither object nor consent.

The corollary issues presented to the Court of Appeals in appellant's brief are these:

(a) By what power can the District Court direct the entry of judgments, against this appellant, without the semblance of process, notice or demand?

(b) By what judicial process, is the District Court empowered to over-rule and disregard the earlier decision of this Court of Appeals (No. 9480, decided December 8, 1947) deciding the rights of the parties thereto under the 1945 agreement?

(c) By what law or right had the District Court the power to dispose of money belonging to this Appellant without his consent or semblance of due process of law?

(d) By what power can the District Court, without process, enter judgment and thereupon direct that it be satisfied without the knowledge, consent, or notice to the person whose rights and property are affected?

(e) By what power can the District Court take upwards of $14,000 of appellant's money to pay alleged creditors without proof of claim and leave standing against him judgments in other jurisdictions for the amounts of the claims so satisfied?

(f) By what power may the District Court strike from the record on appeal matter designated by the appellant as essential to his cause?

(g) By what power can the District Court, without notice or consent, after the completion of the Record on Appeal, in accordance with the rules, add to that record matter totally unknown and unseen by the Appellant?

(h) By what power can the District Court distribute money belonging to the Appellant to persons who have, by decision of this Court, been found to have no claim thereto or right therein?

(i) By what power can the District Court impute to an attorney the non-existent power to bind his client by a settlement, *a fortiore*, by his mere presence at a discussion of a settlement in which he declined to commit his client without his client's knowledge? (*White* v. *Joyce*, 158 U. S. 128, cited *Preveden* v. *Hahn*, 36 Fed. Supp. 952.)

HAROLD G. ARON, *Pro Se*,
Petitioner.

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JOHN W. SNYDER, Secretary of the Treasury, United States of America, GREAT LAKES STEEL CORPORATION, KATHARINE M. DRIER, STERN BROTHERS, a corporation, BONWIT TELLER, INC., MORRIS PLAN INDUSTRIAL BANK OF NEW YORK, MABEL GRANT, LILLIAN S. ARON, RICHARD L. MERRICK and BETSY E. RITCHIE,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

There was no opinion in the United States District Court for the District of Columbia is not reported. The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported in 196 Fed. 2d at page 38. It appears in the Record.

Jurisdiction

The Jurisdictional Statement contained in the Petition for Writ of Certiorari is adopted and is not again set forth.

Questions Presented and Errors Urged, etc.

The questions presented, reasons for granting the writ, and Statement of the Case are set forth in the foregoing petition and the request is respectfully made that reference thereto be made and that they be considered as having been incorporated herein.

ARGUMENT

POINT I

The District Court and the Court of Appeals have by their action disregarded and violated the "due process" provisions of the Constitution of the United States, the Fourteenth and Seventh Amendments; the statute of the United States enacting the Federal Rules of Civil Procedure (48 Stat. 1064), the Federal Rules of Civil Procedure—52, 60b, 75a, 75h, 77b and Rule 38 of this Court.

POINT II

The judgment below completely confiscates $14,448.14 of appellant's funds by giving this amount to persons with no right or claim of right thereto, in complete conflict and violation of the decision of the Court of Appeals for the District of Columbia Circuit, reported in *Ritchie* v. *Drier,* 165 Fed. 2d at page 238.

POINT III

The judgment below has used appellant's funds to pay third parties, leaving unaffected judgments, still of record, held by them in other jurisdictions.

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POINT IV

(a) The Court of Appeals has rested its affirmance on findings of fact for which there is no support in the record and which the record completely disproves.

(b) The Court of Appeals repeatedly declined to make or cause to be made any inquiry as to the complete baselessness of the allegations of consent, in not a single instance made under oath or by sworn testimony, which its opinion finds to be facts and the sole grounds of its affirmance.

(c) The Court of Appeals, for reasons not disclosed re-entitled this cause; in the District Court, in which the decision was made from which appeal was taken, this cause was entitled *Katharine M. Drier, et al.*, Plaintiffs v. *John W. Snyder, Secretary of the Treasury, et al.*, Defendants, and under that title the notice of appeal to the Court of Appeals was filed, a previous appeal in this same matter having been decided in that Court on December 8, 1947, under the title *Betsy Ritchie Aron*, Appellant v. *Katharine M. Drier, et al.*, Appellees, including this Appellant, reported in 165 Fed. 2d 238.

(d) The District Court by order dated October 6, 1950, struck from the record designated for appeal to the Court of Appeals by this appellant the following items: (1) Memorandum of Harold G. Aron, in opposition to motion of Great Lakes Steel Corporation for judgment against him on the pleadings herein, filed May 2, 1950; (4) "Consent order filed April 21, 1950." (5) Unsigned order on motion of Great Lakes Steel Corporation for judgment on the

pleadings, submitted on March 7, 1950; (6) Motion on consent, date not shown, to authorize withdrawal of $18,167.77 by plaintiff from Registry of Court—the items so designated were highly relevant to the appeal, the District Court was totally without power to strike them out and a precedent was established by which, in effect, an appellate court is only permitted to see such part of the record as the trial court, appealed from, desires it to see.

POINT V

The proceedings below embrace in six separate aspects such flagrant departure "from the accepted and usual course of judicial proceedings" as to bring this petition squarely within Rule 38 of this Court and, such a gross miscarriage of justice or subtle erosion of statutory and legal principles "as to bring it within this quoted language of Stern's Supreme Court Practice" page 114, and the cases cited thereunder, all of which appear to have arisen in the District of Columbia and to have been eventually reversed by this Court.

Fisher v. *United States*, 328 U. S. 463, 490;
Aldridge v. *United States*, 283 U. S. 308;
Best v. *District of Columbia*, 291 U. S. 411;
Reed v. *Allen*, 286 U. S. 191.

CONCLUSION

A writ of certiorari for the review of the proceeding below should be granted and this case should be heard and decided by this Court.

Respectfully submitted,

HAROLD G. ARON, *Pro Se*,
Petitioner,
76 Beaver Street,
New York City.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

PETITION FOR REHEARING.

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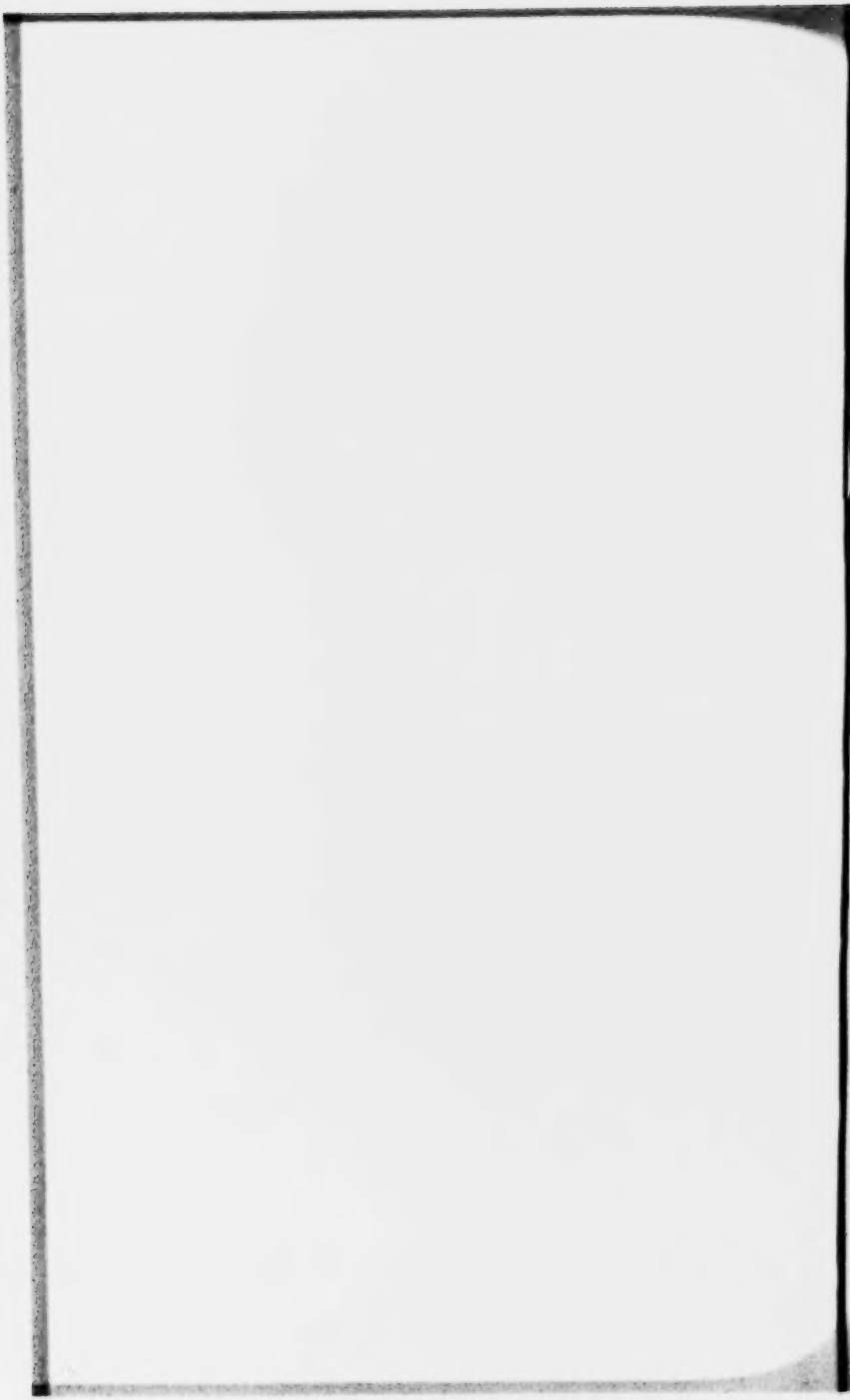

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HAROLD G. ARON, *Petitioner,*

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JOHN W. SNYDER, SECRETARY OF THE TREASURY, UNITED STATES OF AMERICA, GREAT LAKES STEEL CORPORATION, KATHARINE M. DRIER, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

PETITION FOR REHEARING.

A petition for writ of certiorari was denied herein on October 20th, 1952. Petitioner prays a re-hearing thereof under Rule 33, as amended, upon the following grounds:

> Because of inadvertence and ignorance of its existence, the Petition was not grounded upon Rule 39, and, while the public interest was alluded to in the Petition and accompanying brief, relief was asked under Rule 38 (Rule 39 not being mentioned) primarily because of the injury, damage and loss of property suffered because of the departure of the Court of Appeals for the District of Columbia from the accepted and usual course of judical proceedings by the Petitioner personally, which he recognizes is not a matter of public interest.

Petitioner now respectfully submits that his Petition fully meets the provision of Rule 39:

> "That the public interest will be promoted by prompt settlement in this Court of the questions involved may constitute a sufficient reason"—for granting a writ of certiorari.

Those questions here are:

> May any Court of Appeals make totally new findings of fact and base its affirmance thereon, *a fortiori*, where there is no evidence to support such findings and they are in direct conflict with the proved and undisputed facts?
>
> See Note 1, *infra*.
>
> May any Federal Court suspend, disregard and violate the Federal Rules of Civil Procedure (48 Stat. 1064), whenever it sees fit to do so?
>
> See Note 2, *infra*.
>
> May a District Court disburse, to his complete exclusion, funds deposited in its Registry, belonging to a litigant, without his consent, trial, judicial inquiry, testimony or evidence of any kind, under oath or otherwise?
>
> See Note 3, *infra*.
>
> May a District Court so dictate and control the record on appeal to a Court of Appeals as to exclude therefrom relevant and material parts of the record in the District Court, designated by the appellant?
>
> Note 4.
>
> May a District Court disburse moneys held in trust in its Registry as it sees fit, without regard to proved claims of right and ownership in complete

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violation of the Seventh and Fourteenth Amendments of the Constitution of the United States?

Note 5.

As to none of these questions is there any issue of fact; the petition was not opposed and none of the facts involved, or as stated in the Petition, have been challenged or disputed.

Note 1.

Such new findings by the Court of Appeals are as follows (Page 32 of the Record):

"that the remaining one third should be used to buy up intervening claims against Aron in such amounts as should be designated by him or *by the court*" so italicised in the opinion—a totally erroneous statement.

(Note bottom Page 33):

"Erroneously stated in Appendix to appellant's brief as Judge Curran"—appellant's statement was wholly correct (R. p. 27a).

(Page 33):

"Neither the judgment not the record, as covered by the Appendix to appellant's brief, revealed any objection to the judgment at the time it was entered" a totally inaccurate statement.

(Page 34):

"Doubtless the Clerk acted agreeably to the court's direction "to pay forthwith the amounts provided in the judgment."—a completely false assumption as the Record indicates and as this Court will find if it grants the Petition.

(Page 34):

"nevertheless the attorney was present when the judgment was signed"—a disastrously erroneous statement.

Note 2.

Rules of Civil Procedure Nos. 55, 60b, 75a, 75h, and 77b.

Note 3.

No process has ever been issued in this action, no trial has been had, no witnesses examined, no depositions or affidavits offered or accepted and no inquiry made as to the facts; nevertheless $34,867.04, belonging to this Petitioner, has been paid out to his utter exclusion and in complete violation of the decision in *Ritchie* v. *Drier*, 165 Fed. 2d 238, certiorari denied in 334 U. S. 860.

Note 4.

On motion of the Great Lakes Steel Corporation, appellee, District Judge Tamm struck from the record on appeal four items designated by the appellant by order dated October 6, 1950, which was not permitted to appear in the record in the Court of Appeals and is not in the record considered by this Court.

Note 5.

The appellant has been a member of the bar of this Court for more than thirty years, has appeared before it and has, as any lawyer, for it a deep and sincere reverence. It is this more than self-interest which accounts for his persistence in this petition. The practice of the Court being what it is on petitions of this nature—submission without hearing, decision without explanation (*Darr* v.

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Buford, 339 U. S. 200), grounds for denial of his petition are to him utterly inscrutable. The only conjecture which he has been able to conjure up is that the record, as emasculated below, has misled this tribunal. In the opinion of the Court of Appeals (R. p. 32) there are italicized the words *"by the court"* in the sentence reading, in part, "that the remaining third should be used to buy up intervening claims against Aron in such amounts as should be designated by him or *by the court.* (This was not the language of the agreement which read "as designated by you (Aron) or by Court Order.") The necessary implication of this statement in the opinion of the Court of Appeals is that the appellant had agreed to any distribution of the fund in the Registry which might be made by the United States District Court for the District of Columbia. Were this the fact, the action of this Court as to the petition now here can be understood in denying the petition, because, despite the serious infractions of due process of law in the courts below, the result in the distribution of the fund was of the appellant's own making and the questions were therefore moot. *Nothing, however, could be further from the truth.* The court referred to was the Supreme Court of the State of New York, where the appellee Ritchie had had herself appointed in 1937 sequestrator of the appellant's assets and earnings, under precisely similar circumstances as those denounced by this Court in *Griffin* v. *Griffin,* 327 U. S. 220.

The reason for the words "or by Court Order" was obviously to avoid any charge of contempt in the New York Supreme Court, as is borne out by the statement of an alternative course in the concluding provisions of the agreement (R. p. 9a).

It will be noted that in the District Court this cause was entitled Katharine M. Drier *et al v.* John W. Snyder

et al (R. p. 1a) but was changed, without appellant's knowledge or consent, in the Court of Appeals to its present title here. This, too, may well have misled this Court on the point as to what was meant by the words "or by Court Order", in sloughing off the fact that a motion was made, pursuant to the agreement in the Supreme Court of New York and denied, as anticipated in the provision of an alternative course in the 1945 agreement.

Unless this Court has been misled on this point by the deficient and distorted record sent up by the courts below, it is utterly inconceivable that it should sanction the distribution by the District Court of funds held in trust in its own Registry, without process, testimony, evidence or consent.

Respectfully submitted,

HAROLD G. ARON, *pro se*,
8300 Talbot Street,
Kew Gardens, N. Y.

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Certificate of Merit.

I hereby certify that service of the foregoing Petition is made in good faith, that I believe it to be meritorious, that it is not made for purposes of delay and that it complies with the provisions of Rule 33, as amended.

HAROLD G. ARON,
Appellant, *pro se.*

Certificate of Service.

I hereby certify this service of the foregoing Petition for Rehearing was made by sending copies thereof by United States mail, postage prepaid to the Solicitor General of the United States, Washington, D. C.; Mrs. Betsy Everson Ritchie, 3348 Gunston Road, Alexandria, Va.; A. K. Shipe, Esq., National Press Building, Washington, D. C., attorney for the Great Lakes Steel Corporation and Soterios Nicholson, Esq., Burlington Hotel, Washington, D. C., attorney for Stern Brothers and Bonwit-Teller, Inc., this 30th day of October 1952.

HAROLD G. ARON,
Appellant, *pro se.*